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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH W. COLE and ERNEST G. COLE

Appeal 2008-4361
Application 09/750,742
Technology Center 3700

Decided:¹ March 20, 2009

Before DONALD E. ADAMS, DEMETRA J. MILLS, and RICHARD M.
LEBOVITZ, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This appeal under 35 U.S.C. § 134 involves claims 47, 48, and 50-60, the only claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

The claims are directed to a game station. Claims 47, 52, and 53 are illustrative:

47. A game station comprising:

a base unit having a first side and an opposing second side, and a first end and a second end, said base unit defining at said first side a first player station for use by a first single player generally facing said first side of said base unit;

said base unit including a base portion and a console extending upwardly from said base portion, said base portion and console positioned between said first end and said second ends of said base unit, said console including a first face corresponding to said first side of said base unit;

a first and a second electronically controlled video display at said first face of said console, said first and second electronically controlled video displays positioned sufficiently proximate to one another to be viewed at the same time by said first player of said first station;

at least one wager accepting device at said game station adapted to accept a wager placed by said first player of said player station to play either or both at least a first wagering game and a second wagering game;

a first electronic game controller adapted to present first wagering game information corresponding to said first wagering game on said first display in response to a first wager placed by said first player and a second

electronic game controller adapted to present second wagering game information corresponding to said second wagering game on said second video display in response to a second wager placed by said first player, said first and second gaming controllers configured to independently generate said first and second wagering game information such that said first and said wagering games and their outcomes are independent, whereby said first player may concurrently play said first and second wagering games by concurrently viewing said first and second wagering game information presented on said first video display and said second video display; and

at least one player input device permitting said first player to provide input to said game station affecting the first and second gaming information presented to said first player by said first and second display.

52. The game status in accordance with Claim 47 including a first keypad mounted to said first face of said console between said first and second displays.

53. A game station comprising:

a base unit having a first side and an opposing second side, and a first end and a second end, said base unit defining at said first side a first player station for use by a first single player generally facing said first side of said base unit;

said base unit including a base portion and a console extending upwardly from said base portion, said base portion and console positioned between said first end and said second ends of said base unit, said console including a first face corresponding to said first side of said base unit;

a first and second electronically controlled video display at said first face of said console, said first and second electronically controlled video

displays positioned sufficiently proximate to one another to be viewed at the same time by said first player of said first station;

a value accepting device at said game station adapted to accept value placed by said first player of said first play station;

an allocation input permitting said first player to allocate value as one or more first wagers for playing a first wagering game and one or more second wagers for playing a second wagering game;

a first game controller adapted to present information regarding a first wagering game on said first display in response to a first wager, a second game controller adapted to present information regarding a second wagering game on said second display in response to a second wager, said first and second gaming controllers configured to independently generate said first and second wagering game information such that said first and said second wagering games and their outcomes are independent, and a first video selector adapted to provide non-gaming video data from a video feed to either said first display or said second video display, whereby said first player may concurrently view first and second game information on said first and second displays while at the same time watching said video presented on one of the same displays presenting said first and second game information.

The Examiner relies on the following prior art references to show unpatentability:

Lucero	US 5,457,306	Oct. 10, 1995
Luciano, Jr. et al. (Luciano)	US 6,050,895	Apr. 18, 2000
Walker et al. (Walker)	US 6,113,495	Sep. 5, 2000

Appeal 2008-4361
Application 09/750,742

Marshall Fey, SLOT MACHINES: A PICTORIAL HISTORY OF THE FIRST 100 YEARS 88, 230, 232 (5th ed., Liberty Belle Books 1983)

Richard M. Bueschel, LEMONS, CHERRIES AND BELL-FRUIT-GUM 225-26 (Royal Bell Books 1995)

The rejections presented by the Examiner are as follows:

1. Claims 47, 48, 50, 51, and 57-60 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Fey and Luciano.
2. Claim 52 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Fey, Luciano, and Lucero.
3. Claims 53-56 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Fey, Luciano, and Walker.

We reverse.

PRINCIPLES OF LAW

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992). “In determining whether obviousness is established by combining the teachings of the prior art, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re GPAC Inc.*, 57 F.3d 1573, 1581 (Fed. Cir. 1995) (internal quotations omitted).

The combination of Fey and Luciano:

ISSUE

Did the Examiner meet his burden of establishing a prima facie case of obviousness?

FINDINGS OF FACT

FF 1. The Examiner finds that “Fey teaches a 1904 Big Six slot machine . . . , [which] is a game station with a base unit having a first side and an opposing second side, and a first end and a second end” (Ans. 3).

FF 2. The Examiner finds that Fey’s “Big Six has a first and second display (the dials) that are positioned sufficiently proximate to one another to be viewed at the same time by the first single player of the first station – a player can clearly see both dials” (Ans. 3-4).

FF 3. The Examiner finds that Fey’s machine has “at least one wager-accepting device (the coin heads at the top of each game) at the game station adapted to accept a wager placed by a player of the player station to play either or both wagering games and allocate values to one or more of the first or second game” (Ans. 4).

FF 4. The Examiner finds that Fey’s machine has “at least one input device (the handle below each dial) permitting the player to provide input to the game station affecting the first and second gaming information presented to the player by the first and second display – the player activates the handle to start the game” (*id.*).

FF 5. The Examiner finds that Fey “fails to teach a first and second video display or electronic game controllers” (*id.*).

FF 6. The Examiner finds that Luciano teaches “a first and a second electronically controlled video display . . . at the first face of . . . [a] console” (*id.*).

ANALYSIS

The game station of Appellants’ claim 47 requires, *inter alia*, “*at least one wager accepting device* at said game station adapted to accept a wager placed by said first player of said player station to *play either or both at least a first wagering game and a second wagering game*” (Claim 47 (emphases added)). We interpret this clause to mean that *each wager accepting device* must be capable of allowing the player to play one *and both* of a first and second wagering game. Claims 48, 50, and 51 depend directly from claim 47.

In contrast, to Appellants’ claims, Appellants contend that Fey’s machine “has two coin slots, each of the coin slots correspond[s] to a single slot machine, thus permitting a single player to place a wager to play only one of the games (i.e.,] each coin slot corresponds to one of the games or dials only” (Reply. Br. 3; *see also* App. Br. 12). We agree.

The game station of Appellants’ claim 47 and 57 require, *inter alia*, “*at least one player input device* permitting said player to *provide input to said game station affecting the first and second gaming information* presented to said player by said first and second display” (Independent Claim 57 (emphasis added)). We interpret this clause to mean that *each player input device* must be capable of providing input to the game station to affect *both* the first and second gaming information. Claims 58-60 depend directly from claim 57.

In contrast to Appellants' claims, Fey's machine "comprises two separate gaming machines associated with a common housing" (App. Br. 13). As the Examiner recognizes "the player activates the handle [of each separate gaming machine] to start the game" (FF 4).

Accordingly, we disagree with the Examiner's intimation that Appellants' claims are limited to the concept of putting "two slot machines in one box" (Ans. 10). In this regard, the Examiner has found that Fey's machine includes a "wager-accepting device (the coin heads at the top of *each* game) at the game station" (FF 3 (emphasis added)) and an "input device (the handle below *each* dial)" (FF 4 (emphasis added)). While we agree with the Examiner's finding that Fey reads on two slot machines in a single box, it does not read on Appellants' claimed invention, which requires a specific arrangement of components that permit (1) a *wager accepting device* that is capable of allowing the player to play either one or *both* of a first and second wagering game and/or (2) a *player input device* that is capable of providing input to the game station to affect *both* the first and second gaming information.

The Examiner has failed to establish how Luciano makes up for this deficiency in Fey. Therefore, in sum, the Examiner failed to meet his burden of establishing an evidentiary basis on this record to support the conclusion that Appellants' claimed invention is *prima facie* obvious to a person of ordinary skill in this art over the combination of Fey and Luciano.

CONCLUSION OF LAW

The Examiner failed to meet his burden of establishing a prima facie case of obviousness. The rejection of claims 47, 48, 50, 51 and 57-60 under 35 U.S.C. § 103(a) as unpatentable over the combination of Fey and Luciano is reversed.

The combination of Fey, Luciano, and Lucero:

ISSUE

Did the Examiner meet his burden of establishing a prima facie case of obviousness?

FINDINGS OF FACT

FF 7. The Examiner relies on the combination of Fey and Luciano as discussed above (*see, e.g.*, Ans. 6). Specifically, the Examiner finds that “Fey and Luciano teach the invention substantially as claimed, but fail to teach a keypad mounted between the displays on each face of the console” (*id.*).

FF 8. The Examiner finds that “Lucero teaches a keypad mounted on a slot machine cabinet that allows the player to use a general-purpose charge card to wager on the game” (*id.*).

ANALYSIS

Based on the Examiner’s findings (FF 7 and 8), the Examiner concludes that:

It would have been obvious to one of ordinary skill in the art at the time the time of the invention to have modified Fey and

Luciano in view of Lucero to mount a keypad in the slot machine cabinet . . . in order to allow a player who does not have a house card to play without going through the procedure for getting one, thus providing flexibility that increases the likelihood of players betting.

(*Id.*)

In addition, the Examiner concludes that “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to have placed the keypad between the two displays in order to facilitate use of the keypad with either or both of the displays, thus increasing player convenience” (Ans. 6-7). However, the Examiner failed to identify a teaching in Lucero that supports a conclusion that Lucero teaches or suggests that the keypad (wager accepting device) would have been capable of allowing the player to play *both* of a first and second wagering game. Thus, while Lucero teaches a particular wager accepting device, e.g., a keypad that accepts a general-purpose charge card (FF 8), absent evidence to the contrary, which there is none, Lucero fails to make up for the deficiencies in the combination of Fey and Luciano.

CONCLUSION OF LAW

The Examiner failed to meet his burden of establishing a *prima facie* case of obviousness. The rejection of claim 52 under 35 U.S.C. § 103(a) as unpatentable over the combination of Fey, Luciano, and Lucero is reversed.

The combination of Fey, Luciano, and Walker:

ISSUE

Did the Examiner meet his burden of establishing a prima facie case of obviousness?

FINDINGS OF FACT

FF 9. The Examiner relies on the combination of Fey and Luciano as discussed above (*see, e.g.*, Ans. 7). Specifically, the Examiner finds that “Fey and Luciano teach the invention substantially as claimed . . . but do not teach a non-game video feed to the first or second display such that the player may see the video feed on one of the same displays presenting the first and second game information” (*id.*).

FF 10. The Examiner finds that “Walker teaches displaying all game information and a non-game video feed (i.e., television programming) on a single display . . . [and] that displaying video enhances player retention” (*id.*).

ANALYSIS

The game station of Appellants’ claim 53 requires, *inter alia*, “a value accepting device at said game station adapted to accept value placed by said first player of said first play station; an allocation input permitting said first player to allocate value as one or more first wagers for playing a first wagering game and one or more second wagers for playing a second wagering game” (Claim 53 (emphasis added)).

Claims 54-56 depend directly from claim 53.

Appellants contend that Fey's "machine does not disclose any mechanism for allocating a wager to play first or second games" (App. Br. 18). We agree.

We are not persuaded by the Examiner's reasoning that:

Each of the Big Six slot machines has its own coin head. The player allocates wagers between the first and second game by placing money in the respective coin head. Since the Appellant's [sic] claimed device may have two wager accepting devices (i.e., a coin slot for each machine), the player may allocate wagers between the first and second game by placing money in the respective coin slots. Thus[,] each coin slot is a water allocation input device.

(Ans. 12-13). The Examiner has failed to explain how the claim limitation of "a value accepting device" can be interpreted to read on a device with "two wager accepting devices." Further, the Examiner has failed to provide an evidentiary basis to support the interpretation of an "allocation input" that allocates value between two games, which the Examiner interpreted to read on two separate wager accepting devices. In this regard, it would appear that the Examiner is equating two distinct elements of Appellants' claimed invention, specifically, (1) the value accepting device and (2) the allocation input. The Examiner identifies no evidence on this record to support this construction of Appellants' claimed invention.

CONCLUSION OF LAW

The Examiner failed to meet his burden of establishing a prima facie case of obviousness. The rejection of claims 53-56 under 35 U.S.C. § 103(a) as unpatentable over the combination of Fey, Luciano, and Walker is reversed.

REVERSED

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